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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

In re Application of	:	DECISION ON
CHO	:	
Application No.: 10/567,529	:	PETITION UNDER
PCT No.: PCT/KR2004/002466	:	
Int. Filing Date: 24 September 2004	:	37 CFR § 1.47(b)
Priority Date: 26 September 2003	:	
Attorney Docket No.: 05-476-C	:	
For: APPARATUS AND METHOD FOR THE	:	
POSITION OF A PERSON/OBJECT USING A	:	
MOBILE COMMUNICATION NETWORK	:	

This is a decision on applicant's petition under 37 CFR 1.47(b) filed in the United States Patent and Trademark Office (USPTO) on 19 March 2007.

BACKGROUND

On 24 September 2004, applicant filed international application PCT/KR2004/002466, which designated the US and claimed a priority date of 26 September 2003. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 07 April 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 27 March 2006 (26 March 2006 being a Sunday).

On 07 February 2006, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(h).

On 14 September 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) was required. The NOTIFICATION set a two-month extendable period for reply.

On 19 March 2007, applicant submitted the instant petition under 37 CFR 1.47(b). The petition was accompanied by, *inter alia*, a petition/fee for a four month extension of time, a

declaration of facts by Joo-Young Kim, a memorandum of law by Joo-Young Kim, and a declaration of facts by Jiwon Lim.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Items (1), (3), (4), and (6) have been met.

Item (2) has not been met. The declaration of facts of Jiwon Lim and the accompanying exhibits have been considered. It appears that the internet searches for Mr. Cho's e-mail address and telephone number may have been too specific. For example, in Exhibit 5, the name "Cho Choon Geun" seems to have been used as a search term along with a range for the "Residence ID". It is not clear if a "Residence ID" is required. If it is, perhaps the range can be broadened. Additionally, a broader search using "Cho Choon" as the name would seem to be reasonable. Similar concerns are present in Exhibit 5. Again, it is not clear that a partial address is required. If it is required, perhaps it should be broadened. Also, it appears that a broader search can reasonably be used for Mr. Cho's name.

Item (5) has not been met. The declaration of facts Joo-Young Kim and the memorandum of law by Joo-Young Kim have been considered. The invention disclosure form mentioned in the memorandum appears to be the "Employee's Declaration of Invention" included in Exhibit 3. It is unclear why three additional inventors (You In Ho, Kim Dae Joong, and Yang Ho Yong) are listed in this disclosure form but only one inventor is listed in the international application. The "Assignment" in Exhibit 3 has also been considered. However, the only identifier tying the signed "Employee's Declaration of Invention" and the "Assignment" are the names. Again, four names are given while only one is listed in the international application. The memorandum of law also states that "[a]ll facts in support of the argument and conclusion are set forth in the Declaration of Andrew Choung under M.P.E.P. 409.03(f)." However, a declaration of Andrew Choung does not appear in the application file. Also, the memorandum identifies the application by referring to Schedule A, columns 3-6 and 8. However, these identifiers identify 28 different applications. It appears that a row of Schedule A would need to be identified.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (571) 272-3301
Facsimile: (571) 273-0459